

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

<b>STATE OF TENNESSEE,</b>	)	
	)	<b>No. 3:05-cv-0846</b>
<b>Plaintiff,</b>	)	<b>JURY DEMAND</b>
	)	
<b>v.</b>	)	<b>Judge Wiseman</b>
	)	
<b>BRITLEE, INC., et al.,</b>	)	<b>Magistrate Judge Griffin</b>
	)	
<b>Defendant.</b>	)	

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**STATE'S MOTION TO EXPEDITE THE COURT'S DECISION  
ON THE STATE'S MOTION TO REMAND TO STATE COURT**

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Plaintiff, State of Tennessee, pursuant to Fed. R. Civ. P 7 and LR7.01 moves this Court to expedite its decision on the State's Motion to Remand to State Court.

**WHY EXPEDITED TREATMENT IS NECESSARY**

1. Rome is continuing to cause irreparable harm to Rome's solidier victims who purchased computers from the Defendants within the State of Tennessee.
2. Rome is continuing to violate the State Court's September 23, 2005 Temporary Restraining Order ("TRO") (See Exhibit A).
3. Rome is continuing to violate the State Court's August 23, 2007 Order Granting the State's Motion for Partial Summary Judgment and Denying Defendant Rome Finance, Inc.'s Motion for Summary Judgment. (Docket Number 16, Part 3).
4. Rome is continuing to violate the State Court's September 28, 2007 Order for Rome to Produce Documents. (See Exhibit B).

**STATEMENT OF FACTS**

1. **Rome is continuing to cause irreparable harm to Rome's Tennessee victims.**

From sometime in November, 2004 until September 23, 2005, Defendant Britlee sold computers

to at least 591 soldiers in the State of Tennessee (according to data furnished by Defendant Britlee - Rome has furnished no information), who were also sold financing from either Rome or Millenium. According to Britlee's attorney, less than 150 of these sales were financed by Millenium. Most, if not all of these computers were manufactured by Sony Electronics, Inc. ("Sony"). Sony has a "Sales Profit Picture Guideline" ("SPPG") which as Andrew Quinn, Director of Sony's legal department refers to as a "kind of recommended resale price" for each model of Sony computer. (See Exhibit C).

Based upon a review of the Britlee contracts that were financed by Rome which Britlee furnished to the State,<sup>1</sup> the price charged for the Sony computers was at least 212% of Sony's SPPG<sup>2</sup>. (See Exhibit D) In spite of a State court order prohibiting it, Rome continues to draw funds from or is actively debiting soldier victim's bank accounts, including, but not limited to those accounts service members were required to establish at First Citizen's Bank in Kentucky for purposes of the payroll allotment (a process wherein the Department of Defense automatically withholds the payment from the soldier's pay and deposits it as directed by the allotment), in violation of the State Court's September 23, 2007 Temporary Restraining Order.

After the soldier/victims purchased their computer and financing, most were deployed to Iraq and other combat zones. When their deployment was concluded and they

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<sup>1</sup> Rome has not furnished any documents to the State. Of the 591 sales documents furnished by Britlee, 93 were financed by Millenium, 135 were financed by Rome, and 361 of the Britlee documents did not show which company handled the financing and the State has reason to believe these were also financed by Rome.

<sup>2</sup>As an example, for the Sony computer model FS660, the minimum amount finance by Rome was \$4,597.71, when the Sony SPPG was \$1,799.99.

returned to Fort Campbell, they were given a briefing<sup>3</sup> which included information about the State Court TRO. Some of the soldiers stopped their allotment payments to First Citizens Bank based upon their understanding of the State Court's TRO. Rome's response to some of the stopped allotments was to issue bad credit information against the victim's credit reports.<sup>4</sup>

By continuing to issue bad credit information, and by failing to correct bad credit information that Defendants have already issued, Rome is continuing to damage victims' credit records and preventing them from obtaining needed extensions of credit.<sup>5</sup> Also, the issuance of bad credit information in violation of the TRO has caused some victims to lose their vitally necessary military security clearance,<sup>6</sup> thereby damaging their careers.<sup>7</sup>

Further, the reason Rome used of military allotment as its method of financing reduces the risk taken by the lender because, under the Uniform Code of Military Justice, a

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<sup>3</sup> See Exhibit E - Raw transcript of Deposition of S. M. (Initials used instead of name to protect consumer from ID Theft - Opposing Counsel have copy of Deposition), page 66, lines 12 - 25.

<sup>4</sup> See Exhibit E - Raw transcript of Deposition of S. M. (Initials used instead of name to protect consumer from ID Theft - Opposing Counsel have copy of Deposition), page 65, lines 11 - 20.

<sup>5</sup> See Exhibit E - Raw transcript of Deposition of S. M. (Initials used instead of name to protect consumer from ID Theft - Opposing Counsel have copy of Deposition), page 162, line 25, and page 163, lines 1 - 25.

<sup>6</sup> See Exhibit F - U.S. Army letter to J. M. (Initials used instead of name to protect consumer from ID Theft - Opposing Counsel have copy of letter) referenced "Intent to Deny Security Clearance" - see "Statement of Reasons" on page 5 "Rome Fin, collection for \$4,342.00."

<sup>7</sup> See Exhibits G and H - Exhibit G - MSNBC "Debt holds U.S. troops back from overseas duty" and Exhibit H - Washington Post "Debt keeping troops from duty."

soldier who does not pay off just debts can suffer a bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 6 months.<sup>8</sup> As a result, the intentionally stopping of an allotment, even in light of the TRO that is still in effect against Rome, can have much more serious consequences for a soldier than would be possible against a non-military consumer.

**2. Rome is continuing to violate the State Court's September 23, 2005**

**Temporary Restraining Order ("TRO").** On September 23, 2005 the State Court issued a Temporary Restraining Order that in part ordered Rome to restrain from:

- a. "Adversely affecting Tennessee consumers' credit reports;"
- b. "Continuing to collect the monthly allotment amount for service members who purchased computers in Tennessee;" and
- c. "Drawing funds from or debiting consumer's bank accounts, including, but not limited to those accounts service members were required to establish at First Citizen's Bank in Kentucky for purposes of the payroll allotment." (See Exhibit A)

On September 21, 2006, the State notified Rome's attorneys that victims were complaining to the Fort Campbell Consumer Affairs Office ("CAO") that in violation of the court's order, Rome was making collection attempts against them, and/or filing negative credit information against them with the credit reporting agencies. (See Exhibit K). The State did not receive a response from Rome to this notification.

On October 20, 2006, the State again notified the attorney's for Rome of the complaints of collection attempts or negative credit reports that were being filed by victims with CAO. Rome's attorneys did respond this time with "John, we will look into this and will soon get back

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<sup>8</sup> See Exhibits I and J.

with you. Thanks. William R. Hannah, Esq.” (See Exhibit L) Shortly after the October 20, 2006 notification, Rome’s attorney William R. Hannah contacted the State to explain Rome had programmed its computers to not institute collection efforts or make credit reports on victims located in Tennessee, but forgot that some of the Fort Campbell Soldiers lived in Kentucky and collection attempts and negative credit reports may have occurred as to those victims. The point Rome was, and apparently continues to miss is that the TRO was not limited to victims who were presently living in Tennessee, but to “service members who purchased computers in Tennessee” no matter the place of their current residence.

On January 30, 2007, during the deposition of Specialist E-4 S.M. Herein after “Soldier S.M.” (Initials used to protect identity of victim), a purchaser of a computer from Defendant Britlee in Tennessee, which was financed by Defendant Rome, the State learned for the first time that Defendant Rome had engaged in collection activity as late as December, 2006 against Mr.S. M., including the furnishing of negative credit information to a credit reporting company, causing Mr. M. to incur damage or injury. ( See Exhibit E, pp 86 [lines 20-25], 88 [lines 3-8], 120 [line 25], 121 [lines 1-25], 122 [lines 1-25]). Mr.S.M.’s credit report is attached with all personally identifying information removed (Defendants were present at the deposition and know the identity), but please note the soldier lived in Tennessee and the date shown for the receipt of the information by the credit bureau is “12/06.” (See Exhibit M)

Upon information and belief the State has alleged Rome has, and may continue to violate at least one of the above described provisions of the Court’s TRO. Rome has not disputed that it continued to undertake collection and credit reporting activities after the TRO was issued. (See Exhibit M). Upon information and belief, the State has alleged Rome has, and may continue to

draw funds from service member's bank accounts that Rome required the service members to establish at First Citizens Bank in Kentucky for purposes of the payroll allotment payment. The State Court has ordered Rome to produce documents to determine if such violations have occurred and the frequency of those violations. It is the State's contention Rome filed its Notice of Removal to delay having to comply with the State Court's Order.

3. **Rome is continuing to violate the State Court's August 23, 2007 Order Granting the State's Motion for Partial Summary Judgment and Denying Defendant Rome Finance, Inc.'s Motion for Summary Judgment. (Docket Number 16, Part 3)** The State Court in its August 23, 2007 Order regarding cross motions for summary judgment, ordered in part as follows:

Rome is hereby permanently enjoined and prohibited from including any clause in any Rome agreement or stipulation, verbal or written, restricting jurisdiction or venue to a forum outside this state or requiring the application of the laws of another state with respect to any claim that could arise under or relate to the Tennessee Consumer Protection Act and related acts set forth in Title 47 of the Tennessee Code Annotated. No cost bond is required pursuant to Tenn. Code Ann. § 47-18-108(a)(4).

On October 23, 2007 the State accessed Rome's web site to determine if, Tennessee consumers can still obtain a Rome financing agreement that provides "Gwinnett County, Georgia shall be deemed to be the place of exclusive jurisdiction, venue, discovery, and controlling law for resolution of disputes." (See Exhibit N) The State contends Rome allowing this language continue to be used in financing agreements available to Tennessee consumers, Rome is in direct and continuing violation of the State Court's Order. (Docket Number 16, Part 3). To insure there is evidence of this continuing violation the State used Adobe® Acrobat® 6.0 Standard, version 6.0.05/19/2003, licensed to the Attorney General State of Tennessee, license number

1016-1411-1829-8834-6152, to download in portable document format (“PDF”) the following website: <https://www.romefinance.com> 5 levels deep. (See Exhibit O)

The Court can duplicate the State’s search by going to <https://www.romefinance.com/>, then clicking on “Shop” at the top of the page which takes you to <https://www.romefinance.com/shop.asp>. Clicking on “Shop Now” in the middle of the page takes you to <http://www.ucminc.com/>. By scrolling to the bottom of the page and clicking on “Apply On Line” you are taken to <http://www.ucminc.com/application/application.php> where you are given three options. By clicking on the option described as “Click here if the other two sections **dose** [sic] **not** describe your work, or you are not sure” you will be taken to an application form. In a box on that form that has language beginning “The FEDERAL EQUAL CREDIT OPPORTUNITY ACT.” By scrolling down the language in that box you will come across language to the effect that “Applicant(s) hereby grant ROME a security interest in [sic] all goods transferred by the attached Agreement “ and “Gwinnett County, Georgia shall be deemed to be the place of exclusive jurisdiction, venue, discovery, and controlling law for resolution of disputes.”

This is the exact language of the clause that the State Court, on August 23, 2007, ordered Rome to stop using in its Credit Application and Credit Agreement if used in Tennessee, and, as shown above, this Credit Application was available in the State of Tennessee.

4. **Rome is continuing to violate the State Court’s September 28, 2007 Order for Rome to Produce Documents. (Exhibit B)** On September 28, 2007 the State Court ordered Rome to produce the following documents by October 5, 2007:

- a. That for the period November 4, 2005 through the date of Rome’s response, Rome shall provide to the State un-redacted copies of all

documents that relate in any way to the collection of payments under a Rome Finance Company, Inc. "Confidential Credit Application and Credit Agreement" that was signed by an applicant in Tennessee, to finance the purchase of goods or services from Britlee, Inc., including, but not limited to:

1. Complete payment history for each "Confidential Credit Application and Credit Agreement" described above, showing the funding source of each payment (electronic transfer from First Citizens Bank, electronic transfer from another source, credit card, debit care or check);
  2. Each collection letter sent to an applicant who signed a "Confidential Credit Application and Credit Agreement" described above;
  3. All documents that refer to any telephone call made to applicant who signed a "Confidential Credit Application and Credit Agreement" described above;
  4. All documents relative to each referral, of an account of an applicant who signed a "Confidential Credit Application and Credit Agreement" described above, to a collection agency;
  5. All documents filed as part of any legal action taken against an applicant who signed a "Confidential Credit Application and Credit Agreement" described above;
  6. All documents that in any way relate to any applicant who signed a "Confidential Credit Application and Credit Agreement" described above, that were provided to any credit reporting agency.
- b. That, for the period September 23, 2005 though August 31, 2007, Rome shall provide to the State un-redacted copies of all documents that relate in any way to the collection of payments under a Rome Finance Company, Inc. "Confidential Credit Application and Credit Agreement" that was signed by an applicant in Tennessee, to finance the purchase of goods or services from Britlee, Inc., including, but not limited to:
1. A record of each computer programming change, including the date of that change, made between September 23, 2005 and August 31, 2007, that in any way relates to the collection of payments from any applicant who signed a "Confidential Credit Application and Credit Agreement" described above.



Two days prior to the date for compliance with the State Court Order, Rome filed with this Court its Notice of Removal to prevent Rome from having to comply with the State Court Order. The original TRO was issued under the original Complaint and has been continued under the First Amended Complaint which was removed to this Court and then remanded to State Court. The TRO remains in affect. The issue of contempt and the issue of whether Rome has violated Tenn. Code Ann. § 47-18-108(c) predates the current removal and should not be stayed by this removal. Under Tenn. Code Ann. § 47-18-108(c), each time Rome violates an injunction or order of the State Court, it is subject to a statutory penalty of up to \$2,000 per violation. Rome is attempting to use this Court to avoid or delay its having to produce evidence that will show how many times it has violated the 2005 TRO.

### **CONCLUSION**

The State hereby moves this Court to expedite its decision of the Motion to Remand. In support of this Motion, Plaintiff relies on the Memorandum of Law filed contemporaneously with Plaintiff's Motion to Remand to State Court, and incorporated herein by reference.

Respectfully submitted,

**ROBERT E. COOPER, JR.**  
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**[Signatures continue on next page]**

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## **Certificate of Service**

I hereby certify that a true and exact copy of the foregoing document has been filed electronically on October 24, 2007 and served pursuant to the Rules on the United States District Court for the Middle District of Tennessee at Nashville, to:

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